IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition no. 1364 of 2006

Shri Sujit Kumar Madanlal Gupta .....Petitioner

Versus

The Deputy Commissioner of Police, Bhiwandi& anr. .....Respondents

Ms. S.R. Kumbhat for the Petitioner
Ms. R.M. Gadhvi, APP for the Respondents

CORAM: S.C. Dharmadhikari, J
13th April, 2007.

ORAL ORDER

By this Petition under Article 226 of the Constitution of India, the petitioner is challenging the order of the Externment dt. 18-4-2006 and the confirmation thereof by the Appellate Authority on 13-6-2006.

2. By the orders under challenge the Petitioner who is residing at House no. 299, Sunder Beni compound, Bhiwandi, Dist. Thane has been directed to remove himself from Thane district, Mumbai city, Mumbai suburbs and Nasik district for a period of 2 years. The Petitioner was

directed to remove himself within 2 days from the date of receipt of Externment order.

3. Mr. Kumbhat appearing for the Petitioner has assailed the impugned orders by contending that the Petitioner was sought to be externed on earlier occasion and a show-cause notice was served upon him. That show-cause notice is dt. 23-12-2004. However, Externment proceedings in pursuance thereof were dropped after the petitioner pointed out that pre-requisites for externing him are not satisfied. Mrs. Kumbhat submits that same instances and cases have been relied upon and a fresh show-cause notice was issued on 15-12-2005. She submits that once earlier proceedings have been dropped then there is no warrant for initiating fresh proceedings and that too on same grounds. She submits that the Petitioner is a resident of Bhiwandi and a social activist. He has been taking up the cause of animal protection in as much as he has been associated with organisations which are looking after welfare of animals and preventing illegal slaughter of cows and their progeny. She submits that the offences alleged in both notices are identical.

4. Her next submission is that the order externing the Petitioner from the above areas is wholly excessive in as much as the Petitioner being resident of Bhiwandi and his activities being restricted to the said

area, there is no warrant for externing him and directing him to remove himself from other areas which are not remotely connected with his activities. In these circumstances even on this ground the impugned order deserves to be quashed and set aside.

5. For appreciating these contentions, reference to the facts is necessary.

6. The Petitioner was served with show-cause notice copy of which is annexed as annexure A to the present Petition. The show-cause notice alleges that the Petitioner has been indulging in criminal activities in Bhiwandi and nearby areas. However, considering the area of operation of the Petitioner and the facilities for committing the activities so also the means of communication, the Petitioner should show-cause why he should not be externed from Thane District, Mumbai city and Mumbai suburban areas, Navi Mumbai, Raigad and Nasik District for 2 years.

7. In this show-cause notice the instances and grounds are set out. It is alleged that since December 2001 the Petitioner has been active in Bhiwandi city and more particularly Ghungat Nagar, Navi vasti, Kalyan naka and areas falling within the areas of Shanti nagar Police station. He and his associates have been indulging in activities by which it has

become impossible for the people residing in these areas to carry on their business peacefully. There is continuous apprehension in their minds that their property and life is not safe because of these activities.

8. It is not seriously disputed before me that the cases and incidents which have been set out in this show-cause notice, barring a case registered by Bhiwandi City Police Station being CR no. 122/2005 alleging commission of offence punishable under section 147, 149, 323, 341, 504 and 506 IPC, are covered by the earlier show-cause notice and externment proceedings. As far as this CR number is concerned, it is alleged that the Petitioner on 7-7-2005 had been seen with his associates at a place called Liberty Hotel near Kalyan naka. He threatened the owner of the said Hotel along with his associates and forced him to close down his establishment in protest against the firing which took place at

Ayodhya nagar at Ram Mandir Temple. It is alleged that at the instance of the Complainant FIR has been registered as above and the case is pending in the Competent Criminal Court. A charge sheet has been laid in the said case. It is, therefore, alleged that on the record of the Bhiwandi Police station, the Petitioner is shown as a criminal who takes part in activities by which tension is created between Hindu and Muslim communities.

The Petitioner with his associates has been inspecting animals which are brought for slaughter by Muslims on 'Bakri Id' day. By this activity, the Muslim community is upset and angry and thereby tension is created between two communities. Thus, barring this case and the statement of two witnesses who have thought it fit not to disclose their names, all other material is identical to the earlier externment proceedings.

9. According to Mr. Ghadvi learned Additional Public Prosecutor appearing for the State, the contention of the Petitioner that the proceedings are based on identical grounds and materials, is not accurate. The Petitioner continues to indulge in identical activities and to prevent him from doing so and with a view to safeguard the person and property of the residents in locality, the authorities have thought it fit to initiate the subject proceedings. According to her it is permissible in law for them to do so. Further, the ingredients of Section 56 have been completely satisfied in this case. She submits that Section 56(1) specifically provides for a direction to remove the person outside the areas in the State of Maharashtra whether within the local limits of the jurisdiction of the concerned officer or not and whether contiguous or not. Therefore, it is futile to urge that the Petitioner cannot be directed to remove himself from Bhiwandi city limits but also from Thane and other districts as

stipulated in the order. She submits that authorities have applied their mind in as much as the Petitioner has not been directed to remove himself from Raigad district when show-cause notice contemplated such a course of action. Therefore, the impugned orders are wholly legal and valid and require no interference in the extra ordinary jurisdiction of this Court.

10. With the assistance of the learned counsel appearing for both sides, I have perused the petition and annexure thereto. I have perused the impugned orders and the show-cause notice based upon which the same have been passed. The Petitioner admittedly has been residing in the limits of Bhiwandi city policy station over a number of years. This is apparent from the fact that the show-cause notice itself narrates that the Petitioner is known to the residents of locality for last more than 10 years. However, the show-cause notice which was served upon the Petitioner earlier refers to identical instances. The period, namely, December 2001 onwards is also identical. The basis for initiation of proceedings is also identical in as much as reference has been made in both show-cause notices to the activities of the Petitioner as a member of Bajrang Dal and Vishwa Hindu Parishad. Similarly, it has also been recorded in both show-cause notices that the Petitioner has been inspecting the animals brought for slaughter. It is not in dispute that the Petitioner was sought

to be externed earlier. The proceedings have been dropped. In such circumstances, the law laid down by this Court in the case of Subhash vs. K.P. Raghuvanshi & anr. Reported in 1987 (1) Bom CR 425 would apply with full force. In the said case this Court observed that taking recourse to old and stale instances so also relying upon same materials and allegations which have formed part of the earlier proceedings would vitiate the externment order. Although the learned APP submits that the instances and cases in the present show-cause notice and atleast CR no. 122 of 2005 is distinct, in my view, that would not make any difference. The show-cause notice recites a distinct CR number but the allegations are self same. It is the very activity, namely, Petitioner visiting muslim areas as an activist of Bajrang Dal and Vishwa Hindu Parishad and preventing slaughter of animals after inspecting them which is the basis of the earlier and present proceedings. The incident of 7-7-2005 cannot be seen in isolation. The allegations in the show-cause notice do not rest here. It is alleged that the Petitioner's activities agitate minds of muslim community and that is how communal tension is created. That is the basis in earlier proceedings so also the present one. In such circumstances the law laid down by this Court in the decision reported in **1987 (1) BCR page 425** would apply.

11. There is much substance in the second contention of Mrs. Kumbhat as well. This Court has time and again emphasised the fact that merely reciting that there are facilities of communication in the concerned Areas is not enough. The order must reflect that the area where the Petitioner or the externee is carrying on his activities are intimately connected to the districts from which he is sought to be removed. This is the principle which can be culled out from the decisions which have been relied upon by Mrs. Kumbhat. Suffice it to state that in the latest decision reported in **2006 (1) MLJ page-510**, a learned Single Judge of this Court held as under:

> 10. "At this stage, a reference will have to be made to various decisions of the Apex Court and this Court which are relied upon by the Counsel appearing for the parties. A decision of the Division Bench of this Court reported in 1969 Mh.LJ page 387, Balu vs. Division Magistrate Pandarpur is pressed into service. A challenge in the said petition was to the order of externment of the Petitioner who was the resident of Pandarpur in District Solapur. The order of externment passed against the Petitioner extended to District of Solapur, Satara and Pune. One of the challenges to the order of externment was on the ground that the order was excessive. It was argued that Section 56 of the said Act of 1951 authorises externment

of a person outside the area within local limits of jurisdiction of the authority making the order as well as such area and any district or districts or any part thereof contiguous thereto. The Division Bench held that these words used in the Section cannot be so construed as to enable the authority to extend the area of externment without reference to purpose of externment. In paragraph 9 of the said decision the Division Bench held thus:

> "There is a third ground why the impugned order requires to be set aside. Supposing that the two grounds mentioned in clauses 2(h) and 2(i) of the notice permit the externment of the petitioner, it is difficult to understand why the Sub-divisional Magistrate extended the order tot he three revenue districts of Sholapur, Poona and Satara. Section 56 authorises the externment of a person outside the area within the local limits of the jurisdiction of the authority making the order as well as "such area and any district or districts, or any part thereof, contiguous thereto." These words however, cannot be so interpreted as to enable the authority to extend the area of externment without reference to the purpose of the externment. In a sense, the whole State of Maharashtra is contiguous to any area within that State. If the authority concerned is not to have an arbitrary and unguided discretion in deciding the area of externment, it must follow that the area must be so chosen as to meet the situation created by movements or acts of the person to be extended. Such an interpretation is also necessary in order that section 56 may be in conformity with Article 19(5) of the Constitution referred to above. The restriction placed by section 56on the fundamental rights guaranteed by Article 19(1)(d) and (e) of the Constitution cannot be held to be a reasonable restriction, unless the area of externment is restricted to

the requirements created by the movements or acts of the persons to be externed. " (Emphasis supplied)

In the facts of the case before the Division Bench it was found that no reasons were given or suggested by the authority for extending the area of externment to the Districts Pune and Satara. The learned A.P.P. Shri Gadkari appearing in one of the petitions has placed heavy reliance on the decision of the Apex court in 1973 Mh. L.J. (SC) 413 = (1973) I SCC page 372, Pandharinath Shridhar Rangnekar Vs. Deputy Commissioner of Police, The State of Maharashtra. He submitted that the area of externment will have to be larger than the area to which activities of the externee are confined. He submitted that the object is to isolate the externee. The learned APP submitted that in thecase of Pandharinath (supra) before the Apex Court, the activities of the externee were confined to Mumbai but the Apex Court confirmed the order passed which related to the districts of Greater Mumbai and Thane.

11. Perusal of the decision of the Apex Court in case of Pandharinath shows that the Apex Court held that excessive order can be set aside because no greater restraint on the personal liberty of the externee canbe permitted than what is reasonable in the facts of the case. In fact, the decision of the Division Bench of this Court in the case of Balu (supra) is quoted by the Apex Court with approval. However, the Apex Court held that Balu's

case furnishes no anology to the case of Pandharinath which related to city like Bombay. In paragraph no. 15, the Apex Court proceeded to held thus:

15. As regards the last point, it is primarily for the externing authority to decide how best the externment order can be made effective, so as to subserve its real purpose. How long, within the statutory limit of two years fixed by section 58, the order shall operate and to what territories, within the statutory limitations of section 56 it should extend, are matters which must depend for their decision on the nature of the data which the authority is able to collect in the externment proceedings.

The Apex Court quoted with approval the two unreported decisions of this Court where challenge was to the order of externment passed extending to the Mumbai and Thane districts. In the said two decisions, this Court held that it is a matter of common knowledge that the town of Thane which forms part of the area surrounding Mumbai is in an area where large industries have grown contiguous with the industrial area of Greater Mumbai and that the entire industrial area is connected together by several means of communication including suburban trains of which there are several during each day, taxis and bus services. The Apex Court quoted with approval unreported decision of the Division Bench of this Court

where the judgment was delivered by Palekar, J (as he then was). In paragraph no. 20 the Apex Court held thus:

20. These judgments of the Bombay High Court have taken the view that the districts of Greater Bombay and Thana form, so to say, a single unit. Palekar J., observes in his judgment in Criminal Application nos. 30 and 93 of 1970. "It may be that the area of operation may be in a particular locality, but if the externment is limited only to that area, then it might be impossible to prevent the externee from visiting that area every day. Any part in Bombay is easily connected by transport with any other part of Greater Bombay and also the Thana District, and if, for example, an externee is externed outside the limits of Greater Bombay, then he should not take more than 15 minutes to reach Kurla from a place like Thana if the latter is excluded from externment. The very object of externment is to make it as difficult as possible to the externee to return to the field of his activities." Tulzapurkar, J., expressed the same view by saying that "the contiguous area of Thana District is intimately connected with the industrial area of Greater Bombay with cheaper and quicker means of transport and communication. "According to Bhasme, J., who delivered the judgment of the Bench in Criminal Application no. 149 of 1972, "By reason for the means of communication and proximity, the districts of Greater Bombay and

Thana are for all practical purposes one local area or one district." Deshmukh J., in the judgment under the appeal, says that "Greater Bombay and Thana District are intimately connected by several communications." In matters of local colour and conditions the view so consistently expressed by the learned Judges of the High Court must, in our correct, opinion be accepted as correct. All that has been said by the Apex Court is that the view expressed by this Court consistently as regards Mumbai and Thane districts will have to be accepted as correct as the view pertains to the matters of local colour and conditions. The view of this Court which is approved is that Greater Bombay and Thane districts are intimately connected considering several modes of communications and other factors. Any part in Mumbai is easily connected by transport with any other part of Greater Mumbai and Thane districts. Thus, the Apex Court accepted as a matter of fact that the districts Greater Mumbai and Thane are intimately connected as a result of existence of several factors such as contiguous industrial area, availability of suburban trains and they form a single unit. Therefore, the Apex Court confirmed the order of externment of the petitioner before it whose activities were confined to Greater Mumbai from the two districts of Greater Mumbai and Thane. It must be borne in mind that Apex Court has not disturbed the decision

> of the Division Bench of this Court in case of Balu Shivling Dombe. In the case of Balu, aspointed out earlier, this Court held tht liberal interpretation cannot be given to the phraseology used in section 56 of the said Act of 1951 as the Division Bench observed that in a sense the whole State of Maharashtra is contiguous to any area within the State. It must be borne in mind that in the case of Pandharinath, the Apex Court has not adopted the test of geographical proximity. The test adopted by the Apex Court is based on several factors such as availability of easy modes of transport like suburban trains and more importantly intimate connection. What has been accepted as correct by the Apex Court are the decisions of this Court rendered after considering the local colour and conditions holding that Greater Mumbai and Thane are intimately connected and form, so to say, a single unit. "

11. The conclusions in para 12 and 13 of this decision are that the order of externment is excessive when it is demonstrated that the activities of externee are confined to one particular area. These conclusions would apply to the facts and circumstances of the present case. In the instant case the Petitioner was sought to be externed from Thane district, Mumbai city, Mumbai suburban, Navi Mumbai, Raigad and Nasik for 2 years. In the final orders the externment is for a period

of 2 years from Thane, Mumbai city, Mumbai suburban and Nasik district. There does not appear to be any nexus or connection with the activities of the Petitioner with these districts as they are confined to Bhiwandi city limits. In such circumstances, the order of externment is vitiated as excessive as well.

12. In the result the writ petition succeeds. Rule is made absolute in terms of prayer clause (a) & (b).

(S.C. DHARMADHIKARI J)